

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINETH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No. 36411 of 1998

Between:

S.Balarama Swamy, S/o Sri S.Seetharama Swamy, Hindu,
R/o Begumpet, Hyderabad.

..... PETITIONER

AND

- 1 Andhra Bank, Rep. by its Chairman & Managing Director,
Central Office, Saifabad,
Hyderabad.
- 2 The General Manager,
Andhra Bank, Central Office,
Saifabad, Hyderabad.
- 3 The Assistant General Manager,
Andhra Bank, Central Office,
Saifabad, Hyderabad.
- 4 The Personnel Manager,
Andhra Bank, Central Office,
Saifabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Certiorari, calling for the records of the 4th Respondent dt.1.12.87 dismissing the petitioner from service, as confirmed by the 3rd Respondent in his order dt.8.4.88 and the order of the 2nd Respondent in rejecting the review petition filed by the petitioner vide proceedings dt.4.6.97 and quash the same, and for a consequential direction to the Respondents to reinstate the petitioner into service with back wages, continuity of service and all other attendant benefits ; and pass such other order or orders as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: Mr. RAMESH RANGANADHAN

Counsel for the Respondents: Mr. NOOTY RAMA MOHAN RAO

The Court made the following :

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.36411 of 1998

-

ORDER:

-

This Writ Petition is filed seeking to quash the Order dated 1-12-1987 passed by the 4th respondent as confirmed by the 3rd respondent in his Proceedings dated 8-4-1988 and also the Order dated 4-6-1997 passed by the 2nd respondent rejecting the review petition filed by the petitioner and for a consequential direction to the respondents to reinstate the petitioner into service with back wages, continuity of service and all other attendant benefits.

By Proceedings dated 1-12-1987 of the 4th respondent, the petitioner, who was working as an Officer of Middle Management Grade-II in the respondent-Bank, was dismissed from service. Aggrieved by the same, he had filed an appeal before the 3rd respondent and the same was rejected by an Order dated 8-4-1988. Thereafter, petitioner did not move any authority and after more than eight years filed a petition seeking review of the order dated 8-4-1988 purported to be on the grounds *inter alia* that the authority, who conducted the disciplinary proceedings was not competent to do so. The service conditions of the employees as well as the Officers of Andhra Bank were governed by the Andhra Bank Officer Employees (Discipline and Appeal) Regulations and the Andhra Bank Officers Employees (Conduct) Regulations. In the Andhra Bank Officers Employees (Discipline and Appeal) Regulations, 1981, a schedule of disciplinary authorities, appellate authorities and reviewing authorities is enumerated. Insofar as Grade-II Officers (MMG-II) are concerned, the disciplinary authority is the Assistant General Manager, appellate authority is the Deputy General Manager and reviewing authority is the General Manager. Having regard to the said schedule, the Personnel Manager has no legal authority or sanction to issue charge sheet and dismissal order as was done in the

case of the petitioner. Consequently, all Proceedings in pursuance of the charge sheet dated 15-6-1986 including the order of dismissal would stand vitiated. The review petition was, however, dismissed on the ground that the same was filed after a lapse of 8½ years and, therefore, reviewing of dismissal order dated 1-12-1987 was not possible. Aggrieved by the same, the present writ petition is filed.

Respondent-Bank filed a detailed counter affidavit denying the allegations made by the petitioner and asserting that the petitioner ought to have approached this Court promptly and within a reasonable period of time. After more than 10½ years of attainment of finality to the punishment awarded to the petitioner when the appeal preferred by him has been turned down in April, 1988, he has filed the present writ petition on 29-12-1998. He has not explained that how it took such long, unreasonable and inordinate delay in approaching this Court. Because of passage of such long period of time from the date of imposition of punishment, the respondent-Bank is not in a position to effectively contest the matter. Petitioner has not raised the said objection either with regard to the procedural violations in the matter of conducting disciplinary enquiry or in the matter of jurisdiction and competency of the Personnel Manager to impose punishment before the domestic Tribunal. Therefore, he cannot agitate the same in this writ petition. His conduct in not raising such objections at the earlier point of time tantamounts to waiver of such objection.

Learned counsel for the petitioner submitted that under similar circumstances, this Court in W.P.No.16603 of 1984, dated 10-6-1988 held that the Personnel Manager is a Scale IV Officer, whereas the Assistant General Manager is a Scale-V Officer. Further, the Board of Directors have no power to authorize a procedure different from what is set out in the guidelines in respect of disciplinary matters. Any matter covered by the Regulations must be dealt with in the manner specified in the Regulations, but not in any other manner. It is a settled rule of law that when a statute specifies a particular procedure for exercise of power, the exercise of power in any other manner is invalid. This Judgment was followed in W.P.No.4825 of 1989, dated 31-1-1991 and W.P.No.15634 of 1989, dated 12-7-1991. In the said cases also, the impugned orders were passed by an Officer, who was not competent to do so, and the same were accordingly quashed. Therefore, the case of the petitioner is also squarely covered by the said Judgments and the petitioner is also entitled for the same relief. Learned counsel also relied upon a decision of the apex Court in

K.C. SHARMA & OTHERS v. UNION OF INDIA & OTHERS and drawn attention of the Court to paragraphs 3 to 6, which read as under:

“3. This appeal is directed against the judgment of the Principal Bench of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') dated July 25, 1994 in O.A. No. 774 of 1994. The appellants were employed as guards in the Northern Railway and they retired as guards during the period between 1980 and 1988. They felt aggrieved by the notification dated December 5, 1988 whereby Rule 2544 of the Indian Railways Establishment Code was amended and for the purpose of calculation of average emoluments the maximum limit in respect of Running Allowances was reduced from 75% to 45% in respect of period from January 1, 1973 to March 31, 1979 and to 55% for the period from April 1, 1979 onwards.

4. The validity of the retrospective amendments introduced by the impugned notifications dated December 5, 1988 had been considered by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. No. 395-403 of 1993 and connected matters and the said notifications in so far as they gave retrospective effect to the amendments were held to be invalid as being violative of Articles 14 and 16 of the Constitution. Since the appellants were adversely affected by the impugned amendments, they sought the benefit of the said decision of the Full Bench of the Tribunal by filing representations before the Railway Administration. Since they failed to obtain redress, they filed the application (O.A. No. 774 of 1994) seeking relief before the Tribunal in April, 1994. The said application of the appellants was dismissed by the Tribunal by the impugned judgment on the view that the application was barred by limitation. The Tribunal refused to condone the delay in the filing of the said applications.

5. The correctness of the decision of the Full Bench of the Tribunal has been affirmed by this Court in *Chairman, Railway Board v. C. R. Rangadhamaiah*, Civil Appeals Nos. 4174-4182 of 1995* and connected matters decided today.

* Reported in (1997) 7 JT (SC) 180.

6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of O.A. No. 774 of 1994 is condoned and the said application is allowed. The appellant would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. Nos. 395-403 of 1993 and connected matters. No order as to costs.”

and submitted that this case is also fully covered by Judgment of this Court rendered earlier as stated *supra*. Therefore, this writ petition is liable to be allowed, since passing of the impugned proceedings was arbitrary, illegal and without jurisdiction. Therefore, the impugned orders are *non est* in law and review petition filed even after lapse of 8½ years cannot be taken as hopelessly delayed once the impugned orders do not stand the scrutiny of law.

As seen from the above, the sole inspiration for the review petition must be the above two Judgments, though they were not referred to and relied upon by the petitioner in the grounds of review petition. I have gone through the Judgments in the above two cases. Petitioners in the said cases approached this Court immediately

after their dismissal from service without any loss of time. Whereas, in this case, petitioner having accepted the dismissal order as confirmed by the appellate authority and after a lapse of more than 8½ years has filed a review petition on 28-4-1987. The order passed by the appellate authority attained finality as early as in April, 1988. Petitioner did not move his little finger for about 8 years. Filing of the review petition is also to create a cause of action for the purpose of filing writ petition. Therefore, the only question that needs to be considered is whether under the given circumstances, the order passed in the review application, which is impugned in the writ petition, can be said to be bad.

Absolutely, no reasons were furnished in the affidavit filed in support of the writ petition explaining the abnormal delay of 8½ years in filing a review petition. Even in the review application, petitioner did not refer to the Judgments passed by this Court, which are relied upon now. There should be some finality of the Proceedings, whether they are right or wrong. Once concluded, they cannot be allowed to be reopened after 8½ years of their attaining finality and filing this writ petition after 10½ years and granting relief after more than 16 years by this Court is nothing but a futile exercise of its discretionary powers under Article 226 of the Constitution of India. The facts of this case do not inspire the confidence of the Court to exercise its discretionary jurisdiction to grant any relief to the petitioner. The doctrine of finality should be honoured and respected. This is not a case where any exception is made to exercise the discretionary powers of this Court under Article 226 of Constitution. The impugned order dated 4-6-1997 rejecting the review application of the petitioner cannot be said to be illegal or arbitrary and does not deserve any consideration by this Court. Consequently, no interference can be made into the impugned Proceedings dated 1-12-1987 of the 4th respondent as confirmed in Proceedings dated 8-4-1988 of the 3rd respondent.

Incidentally, I have looked into the charge sheet, the dismissal order and the appellate order. The facts therein do not inspire the confidence of this Court to interfere with the matter.

Accordingly, the writ petition is dismissed. No costs.

29th October,2004

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

- 1 The Chairman & Managing Director, Andhra Bank,
Central Office, Saifabad,
Hyderabad.
- 2 The General Manager,
Andhra Bank, Central Office,
Saifabad, Hyderabad.
- 3 The Assistant General Manager,
Andhra Bank, Central Office,
Saifabad, Hyderabad.
- 4 The Personnel Manager,
Andhra Bank, Central Office,
Saifabad, Hyderabad.
5. 2CD copies.